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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 CATHIE L. PARKER,

10 Plaintiff,

11 v.

12 IDEARC MEDIA SALES - WEST INC.,

13 Defendant.
14

CASE NO. C07-1293BHS

ORDER DENYING
DEFENDANT'S MOTION
FOR RECONSIDERATION

15 This matter comes before the Court on Defendant's Motion for Reconsideration
16 (Dkt. 62). The Court has considered the pleading filed in support of the motion and the
17 remainder of the file and hereby denies the motion for the reasons stated herein.

18 **I. PROCEDURAL BACKGROUND**

19 On August 17, 2007, this action was removed from the Superior Court of the State
20 of Washington in and for the County of Snohomish to the United States District Court for
21 the Western District of Washington at Seattle pursuant to 28 U.S.C. §§ 1331, 1332 and
22 1441. Dkt. 1.

23 On August 31, 2007, Plaintiff Cathie Parker filed an Amended Complaint against
24 Defendant Idearc Media Sales – West Inc. alleging damages for gender and disability
25 discrimination in violation of the Washington Law Against Discrimination ("WLAD"),
26 RCW Chapter 49.60, conduct in violation of the Family and Medical Leave Act
27 ("FMLA"), 29 U.S.C. Chapter 28, and defamation of character. Dkt. 11.
28

ORDER

1 On November 13, 2008, Defendant filed a Motion for Summary Judgment. Dkt.
2 31. On December 1, 2008, Plaintiff responded and included a motion to strike evidence
3 submitted by Defendant. Dkt. 45. On December 5, 2008, Defendant replied. Dkt. 52.

4 On December 30, 2008, the Court issued an order granting in part and denying in
5 part Defendant's motion. Dkt. 58 ("Order"). The Court granted Defendant summary
6 judgment on Plaintiff's claims of gender discrimination and retaliation under the WLAD,
7 disability retaliation under the WLAD, and defamation. *Id.* at 11. The Court denied
8 Defendant summary judgment on Plaintiff's claims for violation of the FMLA and
9 discrimination under the WLAD. *Id.*

10 **II. FACTUAL BACKGROUND**

11 The facts are thoroughly explained in the Order.

12 **III. DISCUSSION**

13 Motions for reconsideration are governed by Local Rule CR 7(h), which provides
14 as follows:

15 Motions for reconsideration are disfavored. The court will ordinarily deny
16 such motions in the absence of a showing of manifest error in the prior
17 ruling or a showing of new facts or legal authority which could not have
18 been brought to its attention earlier with reasonable diligence.

19 Local Rule CR 7(h)(1).

20 On reconsideration, Defendant requests that the Court grant it summary judgment
21 on Plaintiff's claim for violation of the FMLA. Order at 5. First, Defendant claims that
22 Plaintiff's March-July leave was not FMLA-protected leave. Dkt. 62 at 2-3. The Court
23 recognized that fact in the Order. *See* Order at 3, lines 7-10.

24 Second, Defendant claims that no member of the board that decided to terminate
25 Plaintiff's employment was aware that Plaintiff was on FMLA-protected leave when they
26 made their decision. Dkt. 62 at 3-4. As stated in the Order, the binding precedent is that
27 Plaintiff must produce either circumstantial or direct evidence that FMLA-protected leave
28 was a "negative factor" in Defendant's decision to terminate her. *See* Order at 7.


1 Obviously, if Plaintiff is unable to show that there was a possibility that someone
2 involved in the decision to terminate her employment had knowledge or access to
3 information that she was on FMLA-leave, then she would fail to show that the leave was
4 a negative factor. Plaintiff, however, has produced *some* circumstantial evidence that
5 raises an inference that her FMLA-protected leave was a “negative factor” in Defendant’s
6 decision to terminate her employment. The Court recognizes that this evidence is scant,
7 but it is in the record. For example, Plaintiff has produced some evidence that other
8 employees feared that their employment would be terminated if they asked for protected
9 leave. Order at 11. Plaintiff has also shown that there was a short period of time between
10 her asking for leave and Defendant terminating her employment. Order at 12. Moreover,
11 there was a series of phone calls between human resource personnel and the board that
12 made the decision to terminate Plaintiff’s employment. The inference could be drawn,
13 notwithstanding Defendant’s contention to the contrary, that the board had knowledge
14 that Plaintiff was on leave when considering the decision to terminate Plaintiff’s
15 employment. Therefore, allowing Plaintiff to present this evidence to a jury and letting it
16 draw reasonable inferences as it may is not manifest error.

17 IV. ORDER

18 Therefore, it is hereby

19 **ORDERED** that Plaintiff’s Motion for Reconsideration (Dkt. 58) is **DENIED**.

20 DATED this 23rd day of January, 2009.

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BENJAMIN H. SETTLE
United States District Judge